

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Inventor:	Dominik J. Schmidt	§	Atty.Dkt.No.:	6057-60300
Serial Number:	09/930,827	§	Examiner:	Grey, Christopher P.
Filing Date:	August 15, 2001	§	Group/Art Unit:	2616
Title:	RF SNIFFER	§	Conf. No.:	1388
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PRE-APPEAL BRIEF REQUEST FOR REVIEW

Applicant requests review of the rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

REMARKS

There are four pending independent claims: 1, 16, 28, and 30. Claim 1 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Kobylinski et al. (U.S. Patent No. 7,242,938) in view of Scholefield (U.S. Patent No. 5,752,193), in view of Gorsuch (U.S. Patent No. 6,526,034), and in further view of Himmel (U.S. Patent No. 6,742,052). Claims 16 and 30 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Scholefield in view of Gorsuch, and in further view of Himmel. Finally, claim 28 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Kobylinski in view of Gorsuch in further view of Himmel.

Applicant's claim 1 (representative of the pending claims for purposes of this review) recites “**bonding** a short-range radio channel with the allocated cellular frequency channels thus increasing available bandwidth for data communication between the mobile station and the base station” and “transmitting data to the base station, **in parallel**, over the bonded short-range radio channel and the allocated cellular frequency channels.” This claim language refers to aggregating two different types of channels (short-range radio, cellular frequencies) to “increas[e] available bandwidth.” See also Specification at [0008]-[0009]. As specified, these aggregated channels are then transmitted “in parallel” (i.e., at the same time) to the base station. The Examiner has suggested that the above-quoted language could refer to alternately transmitting on one set of channels and then the other. Office Action of October 1, 2008 at page 5. Now the Examiner appears to cite two pieces of art in an attempt to teach this combination of features: Gorsuch and Himmel. *Id.* at page 4. Applicant disagrees. Neither reference teaches or suggests bonding of the type set forth in the claims, which involves two disparate types of communications channels. As such, the proposed combination of references fails to teach or suggest each and every limitation of the pending claims.

Gorsuch discloses “a technique for communicating with a local area network (LAN) via a wireless connection” that “determines whether a first short-range, high-speed, wireless communication path is available and connects to the LAN using a longer range, lower speed wireless communication path **if the short-range, high-speed wireless communication path is not available.**” See Gorsuch Abstract (emphasis added). Gorsuch also shows in FIG. 6 that there are switches 211a and 211b that connect either the CDMA transceiver 140 OR the 802.11

transceiver 240 between the interface 120 and the antenna 150. *See also* Gorsuch col. 2, lines 55-59 (noting that the “present invention” “is a single device which connects directly to a WLAN using a protocol such as IEEE 802.11 when such a connection is possible” and that “automatically reverts to connecting to the long range network only when out of range of the WLAN base stations”).

Applicant submits Gorsuch is disclosing a system that uses only one transceiver or the other, and not both at any given time. As shown in FIG. 6 of Gorsuch, the CDMA pathway and the WLAN pathway are mutually exclusive. Gorsuch therefore is NOT disclosing or suggesting “bonding” of the CDMA channels (“allocated cellular frequency channels”) and the WLAN channels (“short-range radio channel”). The Examiner appears to acknowledge as much by admitting that the combined teachings of Kobylinski, Scholefield, and Gorsuch do not specifically disclose the “in parallel” feature of the pending claims. *See* Office Action of October 1, 2008 at page 4. As such, Gorsuch cannot be said to teach or suggest the “bonding” recited in Applicant’s claims.

Himmel, alleged by the Examiner to supply the features of the claims missing from the other references, is directed to a “wireless system bus” in a computer which may provide “discovery and acceptance of wireless peripheral devices,” in which serial or parallel transmission can be supported. *See* Himmel Abstract. Himmel discloses “[a] parallel communication channel” “using 8 transceivers” “that are set to transmit and receive signals at 8 different frequencies.” *See* Himmel at col. 8, lines 36-39. Himmel also discloses that “parallel communications or signals are transmitted using a separate frequency for each of the parallel channels required. For example, eight bit parallel communications would require that each of the eight bits be transmitted at the same time or clock pulse over eight different frequencies.” *Id.* at col. 3, lines 33-38. Applicant submits this type of communication is no different than a parallel bus on a circuit board, with the exception that each channel in Himmel uses a different channel frequency. Thus, although Himmel teaches parallel communication, Himmel does not teach or suggest bonding disparate types of channels, much less the types of channels recited in the pending claims (cellular frequency channels and short-range radio channels).

Accordingly, neither Gorsuch nor Himmel discloses the bonding of channels as recited in the pending claims. Accordingly, the proposed combination of references does not include each and every feature of the claims. Accordingly, the Examiner has failed to establish a *prima facie* case of obviousness.

In addition to the fact that none of the cited references teach or suggest the above-highlighted features of claim 1, Applicant also submits that even if it is assumed that Himmel supplies the limitations missing from the other references, there is not adequate motivation to modify Gorsuch in view of Himmel. As noted above, Gorsuch discloses having the “CDMA transceiver 140” to connect to the local area network “when out of range of the W-LAN base stations.” In addition, Gorsuch shows in FIG. 6 that the WLAN detection circuit 200 preferentially selects the WLAN path when a WLAN signal is present. Accordingly, the CDMA channels in Gorsuch are backups for the WLAN channels. It is unclear why one of skill in the art would have been motivated to modify Gorsuch in view of Himmel to transmit the CDMA and WLAN channels at the same time when there is no apparent need to do so in the context of Gorsuch. The mere fact that parallel wireless transmission was known (e.g., Himmel) is irrelevant, as there has to be some adequate motivation for modifying Gorsuch in view of Himmel. There is none, as neither reference demonstrates that it was known in the art to bond two disparate types of wireless channels, much less the types of channels recited in the pending claims.

CONCLUSION

The Commissioner is authorized to charge any fees that may be required, or credit any overpayment, to Meyertons, Hood, Kivlin, Kowert & Goetzel, P.C. Deposit Account No. 501505/6057-60300/SJC.

Respectfully submitted,

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